

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

INNOVATION VENTURES, LLC, ET AL., : X
Plaintiffs, :
: 12 Civ. 5354 (KAM)
-against- :
ULTIMATE ONE DISTRIBUTING CORP., ET :
AL. :
Defendants. :
: **STIPULATION AND ORDER**
X

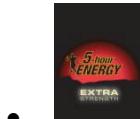
UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel for Plaintiffs Innovation Ventures, LLC; Living Essentials, LLC; International IP Holdings, LLC (together, “Plaintiffs”), and counsel for defendant Naftaunited.com, it hereby is ORDERED as follows:

1. Naftaunited.com acknowledges having been served with the following documents and waives any defenses as to personal or subject matter jurisdiction with respect to these documents: Summons and Seventh Amended Complaint; and Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction dated December 28, 2012 (“Order to Show Cause”), including the supporting Declarations and Memorandum of Law.

2. For purposes of this stipulation, the “5 HOUR ENERGY Marks” are:

- “5 HOUR ENERGY” (Registration No. 3,003,077);
- “5-HOUR ENERGY” (Registration No. 4,004,225);

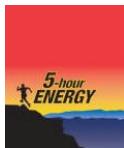
**5-hour
ENERGY**
• (Registration No. 4,104,670);



- which includes the wording "5-hour ENERGY" in black outlined in yellow, below which are the words "EXTRA STRENGTH" in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from black to red as the sky meets the landscape (Registration No. 4,116,951);



- , commonly referred to as "Running Man," (Registration No. 3,698,044); and



- which includes the wording "5-hour ENERGY" in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4,120,360).

3. Naftaunited.com and its agents, servants, employees, and all other persons in active concert and participation with them, pending the final hearing and determination of this action are preliminarily enjoined from:

- (a) using any of the 5 HOUR ENERGY Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- (b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR ENERGY Marks which may be calculated to falsely represent or which has the

effect of falsely representing that the services or products of Naftaunited.com or of others are sponsored by, authorized by, or in any way associated with Plaintiffs;

- (c) infringing any of the 5 HOUR ENERGY Marks;
- (d) otherwise unfairly competing with Plaintiffs in the manufacture, sale, offering for sale, distribution, advertisement, or any other use of dietary supplements;
- (e) falsely representing itself as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that it or the other defendants are associated with Plaintiffs;
- (f) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;
- (g) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being 5-hour ENERGY® and from offering such goods in commerce;
- (h) diluting any of the 5 HOUR ENERGY Marks;
- (i) buying, selling, transferring (other than to Plaintiffs or law enforcement officials), altering, or destroying any counterfeit products with the 5 HOUR ENERGY Marks;
- (j) destroying any records documenting the manufacture, sale, offer for sale, distribution, advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and
- (k) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (j) above.

4. Plaintiffs and Naftaunited.com stipulate that, as among them, there are no issues to address at the hearing scheduled for January 11, 2013, with respect to the Order to Show Cause. Naftaunited.com waives any and all rights it might have to a hearing challenging the issuance of a preliminary injunction.

5. Plaintiffs and their surety U.S. Specialty Insurance Company are released from any and all liability under Bond Number 1000772132 as it relates to the Temporary Restraining Order dated December 28, 2012.

6. Naftaunited.com and Plaintiffs have agreed that, in exchange for Plaintiffs' agreement to release any bank accounts used by Naftaunited.com which have been or will be restrained by Plaintiffs pursuant to the Order to Show Cause (the "Bank Accounts"), Naftaunited.com will transfer \$37,500 into the attorney trust account of their undersigned counsel, Gordon & Rees LLP (the "Attorney Escrow Account") pending either final resolution of this action or written agreement between Plaintiffs and Naftaunited.com. After this Stipulation has been So Ordered, counsel for Naftaunited.com shall instruct Naftaunited.com to wire the total amount of \$37,500 into the aforementioned Attorney Escrow Account. Upon receiving written confirmation from counsel for Naftaunited.com of the transfer of \$37,500 into the Attorney Escrow Account, counsel for Plaintiffs will inform the banks that Plaintiffs have no objection to the lifting of any continuing freeze or restraint on the Bank Accounts.

7. This agreement may be executed in counterparts. Signatures transmitted electronically or by facsimile shall be deemed original.

Dated: January 3, 2013

CONSENTED AND AGREED TO BY:

PATTERSON BELKNAP WEBB & TYLER LLP	GORDON & REES LLP
By: <u>/s/ Geoffrey Potter</u> Geoffrey Potter gpotter@pbwt.com Christos Yatrakis cyatrakis@pbwt.com Michelle Waller Cohen mcohen@pbwt.com Jeremy A. Weinberg jweinberg@pbwt.com 1133 Avenue of the Americas New York, New York 10036 (212) 336-2000 Attorneys for Plaintiffs	By: <u>/s/ Ronald A. Giller</u> Ronald A. Giller rgiller@gordonrees.com Daniel DiMuro ddimuro@gordonrees.com 18 Columbia Turnpike, Suite 220 Florham Park, NJ 07932 (973) 549-2500 Attorneys for Defendants, Naftaunited.com, MCR Innovations and Packaging, Inc., MCR Printing and Packaging Corp., Camilo Ramirez and Mario Ramirez

SO ORDERED:

UNITED STATES DISTRICT JUDGE